

ONE HUNDRED EIGHTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

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April 12, 2023

The Honorable Lina Khan
Chair
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

Dear Chair Khan:

The Committee on the Judiciary is conducting oversight of the Federal Trade Commission's (FTC) abuse of its statutory authorities in investigating Twitter. On March 10, 2023, the Committee wrote to you requesting relevant documents and information about the FTC's recent actions against Twitter.¹ To date, your voluntary compliance has been woefully insufficient. Accordingly, the Committee is issuing a subpoena to compel the production of documents necessary to inform our oversight.

On March 7, 2023, the Select Subcommittee on the Weaponization of the Federal Government released a report revealing how the FTC made inappropriate and burdensome demands coinciding with Elon Musk's acquisition of the company.² The Select Subcommittee's report revealed how the FTC harassed Twitter in the wake of Mr. Musk's acquisition, demanding, among other things, the identities of the journalists with whom it was engaging and all communications relating to Mr. Musk.³ Based on the information in this report showing how the FTC had abused its statutory and enforcement authority, the Committee requested information in its March 10 letter to inform our oversight.⁴

On March 27, 2023, you sent a response letter seeking to justify the scope of the FTC's inquiry into Twitter by linking it to the terms of a narrower FTC Order related to Twitter's privacy practices.⁵ However, as our March 10 letter outlined—and the Select Subcommittee

¹ See Letter from Hon. Jim Jordan, Chair, H. Comm. on the Judic., & Hon. Ted Cruz to Lina Khan, Chair, Fed. Trade Comm'n (Mar. 10, 2023).

² H. COMM. ON THE JUDIC. & SEL. SUBCOMM. ON THE WEAPONIZATION OF THE FED. GOV'T, THE WEAPONIZATION OF THE FEDERAL TRADE COMMISSION: AN AGENCY'S OVERREACH TO HARASS ELON MUSK'S TWITTER (Mar. 7, 2023).

³ *Id.*

⁴ Letter from Jordan & Cruz, *supra* note 1.

⁵ Letter from Lina Khan, Chair, Fed. Trade Comm'n, to Hon. Jim Jordan, Chair, H. Comm. on the Judic. (Mar. 27, 2023).

report explained in detail—the FTC’s requests to Twitter were not limited to the scope of the Order,⁶ making the FTC’s justification pretextual at best. In addition, your letter addressed only one of the Committee’s requests, instead deferring to unspecified “further engagement on [the Committee’s] other requests.”⁷ The FTC also produced none of the requested documents.

The Committee sought to engage with the FTC on its outstanding requests during a hearing of the Committee’s Subcommittee on Responsiveness and Accountability to Oversight on March 29, 2023.⁸ During this hearing, the Director of the FTC’s Office of Congressional Relations testified that she was largely unaware of any progress being made toward satisfying the Committee’s requests.⁹ For example, the Director did not know which FTC employee was overseeing the FTC’s compliance with the Committee’s requests,¹⁰ and provided no information as to what information had been gathered or what sources were being reviewed for production, if any.¹¹ Following the hearing, in an exchange with Committee staff on April 3, 2023, FTC staff confirmed that the FTC had no immediate plans to provide the Committee with the documents and information it had requested.¹²

Based on this information, the Committee has good reason to believe that the FTC will not voluntarily produce the documents requested in our March 10 letter. The FTC’s refusal to provide this material is unacceptable. As Subcommittee Chairman Cline explained at the March 29 hearing:

The absence of a sound and transparent administrative process results in failed and costly Government policies. This is what we are seeing unfold at the FTC under Chair Lina Khan. It is incumbent on Congress to provide oversight to these matters. And such oversight will remain necessary while the FTC continues to take actions on matters its enabling statute does not authorize.¹³

The Supreme Court has recognized that Congress has a “broad and indispensable” power to conduct oversight, which “encompasses inquiries into the administration of existing laws, studies of proposed laws, and surveys in our social, economic or political system for the purpose of enabling Congress to remedy them.”¹⁴ Pursuant to the Rules of the House of Representatives, the Committee on the Judiciary is authorized to conduct oversight on matters relating to the

⁶ See THE WEAPONIZATION OF THE FEDERAL TRADE COMMISSION, *supra* note 2, at 1-2.

⁷ Letter from Khan, *supra* note 5.

⁸ “Compliance with Committee Oversight”: Hearing before the Subcomm. on Responsiveness & Accountability to Oversight of the H. Comm. on the Judic., 118th Cong. (Mar. 29, 2023).

⁹ *Id.*

¹⁰ In an email communication following the hearing, FTC staff identified an employee who has oversight of the Bureau of Consumer Protection, but it is unclear whether this employee was actually overseeing or directing any collection of responsive materials.

¹¹ “Compliance with Committee Oversight,” *supra* note 8.

¹² Telephone meeting between FTC Office of Congressional Relations staff and House Committee on the Judiciary staff (Apr. 3, 2023).

¹³ “Compliance with Committee Oversight,” *supra* note 8.

¹⁴ See, e.g., *Trump v. Mazars LLP*, 140 S. Ct. 2019, 2031 (2020) (internal quotation marks and citations omitted).

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“[p]rotection of trade and commerce against unlawful restraints and monopolies” to inform potential legislative reforms.¹⁵ These legislative reforms could include, among other proposals, laws to ensure that the FTC’s investigative and enforcement authority is not abused in ways that hurt commerce and competition or harm civil liberties and free speech.

Accordingly, and in light of your disregard of our earlier requests for voluntary compliance, please find attached a subpoena for the requested documents and information.

Sincerely,



Jim Jordan
Chairman

cc: The Honorable Jerrold L. Nadler, Ranking Member

Enclosure

¹⁵ Rules of the U.S. House of Representatives, R. X (2023).